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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,115	11/21/2003	Yasuhiro Murakami	00775P0161US	1806

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WOOD, PHILLIPS, KATZ, CLARK & MORTIMER  
500 W. MADISON STREET  
SUITE 3800  
CHICAGO, IL 60661

EXAMINER
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BRINSON, PATRICK F

ART UNIT	PAPER NUMBER
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3754

DATE MAILED: 03/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/719,115	<b>Applicant(s)</b> MURAKAMI ET AL.	
	<b>Examiner</b> Patrick F. Brinson	<b>Art Unit</b> 3754	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 7-9 and 17-23 is/are rejected.
- 7) ☒ Claim(s) 4-6 and 10-16 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:  
         1. ☐ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
         3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the subject matter recited in claims 8 and 22 regarding the pump mechanism must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. This mechanism is only shown in the illustration labeled “prior art”.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective

action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. 5,653,362 to **Patel**.

The patent to **Patel** discloses a vacuum bottle assembly for dispensing beverages comprising a vacuum bottle having an inner liner (50) an outer body (26) about the inner liner in spaced relation thereto and sealed to the inner liner to define a vacuum space therebetween. The container having a bottom, an upstanding side wall terminating in a dispensing outlet (36) remote from the bottom and the container receiving and housing the vacuum bottle. Col. 5, lines 37-44 discloses that the inner liner (50) is in the form of a double walled, silver (reflective material) lined, glass flask that rests on an annular support. The device has a pair of rectangular viewing windows (52) that are formed by removing the generally opaque silver liner in the lining at the appropriate locations so that the interior of the liner is visible. The

window is disclosed in the side wall extending upwardly from a lower location at or above the bottom to upper location at or below the dispensing outlet, and a level indicator (118) can be seen through the transparent window. The indicator is aligned with the window so as to be visible therethrough to provide indication of the level of a liquid contained within the inner liner.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8 and 17-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Patel** in view of U.S. 4,113,147 to **Frazier et al.**

The patent to **Patel** discloses the recited structure with exception of the pump mechanism to dispense the liquid within the container. The patent to **Frazier et al.** discloses a vacuum bottle including a pump dispenser for dispensing liquid from the temperature insulating interior. **Frazier et al.** discloses a removable cap in which the pump mechanism is provided. When air is pumped by operation of the disk and diaphragm, the resulting air pressure causes a flexing of bead (78) away from the

bottom portion (41) of gasket (44) permitting air to pass into the vacuum filler to dispense the liquid contained therein. It would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute for the cap of **Patel** a cap including a pump mechanism, as suggested by **Frazier et al.** in order to alternatively dispense the fluid by pumping instead of pouring.

4. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Patel** in view of U.S. 3,774,603 to **McPhee**.

The patent to **Patel** discloses that the liquid in the container enters tubing (136) and can be seen along the graduations (122) marked on the window, but does not specifically disclose the use of a color that contrast that of the liquid contained within the container. The patent to **McPhee** discloses a liquid contained device including a liquid level indicator. Col. 2, lines 47-53, discloses that opaque stripes of medium blue color contrast very well with the transparent liquid in the chamber and the transparent chamber itself. The stripes are visible above the liquid level and the disappearance of the stripes is an optical illusion which provides very sharp apparent offsets at the top of the fluid level, thus allowing one to readily see how full the chamber is. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide to the container of **Patel** color that contrasts

with that of the fluid within the container, as suggested by **McPhee** in order to assist one in seeing the level of the fluid within the container.

5. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Patel** in view of **Frazier et al.** as applied to claim 8 above, and further in view of **McPhee**.

The patent to Patel, as modified, does not disclose the use of a color that contrast that of the liquid contained within the container. The patent to **McPhee** discloses a liquid contained device including a liquid level indicator. Col. 2, lines 47-53, discloses that opaque stripes of medium blue color contrast very well with the transparent liquid in the chamber and the transparent chamber itself. The stripes are visible above the liquid level and the disappearance of the stripes is an optical illusion that provides very sharp apparent offsets at the top of the fluid level, thus allowing one to readily see how full the chamber is. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide to the container of **Patel**, as modified, color that contrasts with that of the fluid within the container, as suggested by **McPhee** in order to assist one in seeing the level of the fluid within the container.

***Allowable Subject Matter***

6. Claims 4-6 and 10-16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

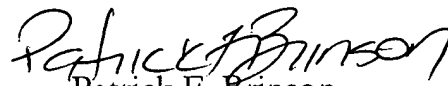
7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Heynderickx et al. and Rolfes et al. are pertinent to Applicant's invention in disclosing beverage containers including volume indicators. The patents to Lee, Iwamoto et al., Medeiros et al., Nishioka, Takenakashima et al., and Ikunosuke et al, are all pertinent in disclosing beverage containers including pumping mechanisms within the caps.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Patrick F. Brinson** whose telephone number is (571) 272-4897. The examiner can normally be reached on M-F 7:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Michael Y. Mar** can be reached on (571) 272-4906. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Patrick F. Brinson  
Primary Examiner  
Art Unit 3754

P. F. Brinson  
March 6, 2006